

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 13222, of the National Broadcasting Co., Inc., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3101.2) for a proposed addition to a studio and office building and to use the existing temporary building for two years from the date of the start of construction of the proposed addition in an R-1-B District at the premises 4001 Nebrasks Ave., N. W. (Square 1722, Lot 1).

HEARING DATE: April 23, 1980 and May 21, 1980

DECISION DATE: June 4, 1980

FINDINGS OF FACT:

1. The application was scheduled for the public hearing of April 23, 1980. The National Capital Planning Commission requested a continuance of the hearing in order that the Commission could make a determination on this application at its May 1, 1980 meeting. There was no objection to the continuance. The application was rescheduled for the Public Hearing of May 21, 1980.

2. The subject site is located on the east side of Nebraska Avenue at its intersection with Tilden Street. It is known as 4001 Nebraska Avenue, N. W. It is in an R-1-B District.

3. The site consists of 315,810 square feet or 7.25 acres of land area. It has sixty feet of street frontage on Nebraska Avenue. The site is shaped somewhat like a baseball diamond. Vehicular access for the site is from a 310 foot long driveway from Nebraska Avenue. There is a 285 car parking lot on the site. The site is further developed with a two story brick structure and a radio tower. The existing structure totals 123,237 square feet of floor area.

4. To the north of the subject site are institutional buildings in an R-1-B District. To the east of the site is Glover Archbold Park followed by C-3-A developed property and the McLean Gardens development in the R-5-A District both fronting on Wisconsin Avenue. To the south and west of the site is U. S. Navy property.

5. The Board first granted the National Broadcasting Company a use variance to establish an office building and special exceptions to establish a television tower and accessory parking in Appeal Number 4159, Public Hearing June 1, 1955. In Appeal Number 5494, the Board granted a use variance to permit continuation and enlargement of accessory parking facilities after a change in the Zoning Regulations.

6. In BZA Appeal Number 8234, dated June 16, 1965, the Board granted a use variance to permit an addition to the office building established under Appeal Number 4159. The existing building then contained 91,370 square feet and the new addition provided an additional 16,280 square feet.

7. In Appeal Number 10120, dated November 16, 1970, the Board granted the applicant a use variance to permit a second-floor addition to the addition permitted under Appeal Number 8234. That addition would contain a floor area of approximately 8,140 square feet. Economic conditions existing at the time that Appeal Number 10120 was approved then made it unwise to proceed with construction. Consequently, that approval expired.

8. In Appeal Number 12011, dated October 22, 1975, the applicant was granted a reinstatement of Order Number 10120 and additional permission to locate a temporary office structure upon the subject property for a period of two years during the period of construction of the proposed second floor addition. The original intent of the applicant was to utilize the temporary building for employees who were awaiting occupancy within the second-floor addition to the broadcast studio, which was then under construction. However, there has been an increase of staff over the past few years, and the main building is still fully occupied with no space to accommodate the occupants from the temporary building. Therefore, the applicant requested a two-year extension of the temporary building use so that existing occupants may remain within such building while NBC searches for a means to relieve its space concerns. This relief was granted by the Board in BZA Order No. 12539, dated March 7, 1978.

9. The applicant now seeks permission to construct in two phases an addition measuring forty feet in height and containing approximately 15,185 square feet in floor area to the southeast of the existing structure. The lower stories will be constructed now and the remaining two stories within five years. The applicant also seeks permission to continue the utilization of the temporary office structure for two years from the commencement of the proposed new construction. The proposed addition will be approximately 83.9 feet in depth and 183.6 feet across the rear of the existing building.

10. The temporary building will remain essentially where it is now located. Approximately three-fifths of it will be demolished, being that part of it which now encroaches upon the site of the proposed construction. The remaining two-fifths will remain as a construction service area for NBC to use. When the proposed addition is completed, the two-fifths will also be demolished.

11. The total number of employees is presently 575. Through the proposed addition, there will be an increase of twenty-four.

12. The increasing origination of news reports and programs from the Nation's Capital over the years has made it necessary to increase the personnel of the staff servicing both the NBC television and radio networks and its local stations.

13. The NBC technical facilities have been expanded to accommodate the increased news and local program origination.

14. The applicant expects the proposed addition to fulfill its expected needs for growth in the future, for a period of approximately ten years.

15. There is no evidence of any change in relevant conditions or circumstances since the Board first granted permission to establish the temporary structure in Application No. 12011.

16. There was no opposition expressed at the public hearing to approval of this application. There was one letter of record in opposition.

17. Both abutting property owners, the U.S. Navy and the National Presbyterian Church, recommended approval of this application.

18. The Office of Planning and Development by report, dated May 20, 1980, recommended that the application be conditionally approved. It reported that the OPD is of the opinion that the site's location in proximity to other commercial uses, size, shape, and history of use are findings needed to establish hardship in a use variance application. The OPD was mindful of the possible negative affects which could impact on the parkland which abuts the site if precautions are not taken. In light of these impacts, the OPD recommended the following conditions be applied if approval is granted:

- a. That the applicant submit detailed landscape plans, and that the plans be approved by NCPC and the National Park Service to assure adequate buffering of the Park.
- b. That the applicant submit engineering plans showing the method by which water run off from the site will be handled in a manner not detrimental to the park, and that the plans be approved by the D.C. Department of Environmental Services and the National Park Service.
- c. That the proposed addition be limited to three stories in height and any additional stories if approved by the Board in the future, be set back from the rear building wall at least to the height of the new additional floors. The Board concurs in the OPD report.

19. The Department of Environmental Services in a memorandum dated May 8, 1980, reported that the existing water distribution and sanitary sewerage system should be adequate to accommodate the proposed development. However, this does not constitute a certificate of water and sewer availability. The records indicate that no sewage treatment plant capacity has been allocated for this project. Since stormwater runoff from the site discharges onto the abutting Glover-Archbold Park property, the storm drainage system design for the project must be submitted to the National Park Service for review. The proposed development must conform to the Soil Erosion and Sediment Control Regulations of the District of Columbia. The proposed development should have no long-term negative impact on air quality and noise levels in the surrounding area. The proposed development should have no significant impact on DES' solid waste collection and disposal activities. Collection services will be provided by a private hauler under contract with the owner. The DES' disposal facilities have capacity to handle the additional solid waste that will be generated at the site. The Board so finds.

20. The National Capital Planning Commission recommended that (1) the set back of the proposed addition be increased along Glover Archbold Park; (2) the proposed building height be reduced so as not to exceed the height of the existing building; (3) the applicant use the same materials on the addition as are used on the exterior of the existing building; (4) additional landscaping; and, (5) an adequate storm drainage retention system so as to assure that the proposed addition will not have a substantial visual and environmental impact on the park or on other Federal interests.

21. The applicant's architect has revised the site plan in order to be compatible with the recommendations of the National Capital Planning Commission. The applicant has also agreed to meet with representatives of the Park Service and the Office of Planning and Development in order to prepare and file a long-range plan of development.

22. The applicant also met with representatives of the Planning Commission after the public hearing and filed a revised site plan on June 2, 1980.

23. By letter of June 3, 1980, the National Capital Planning Commission reported to the Board, as follows:

- " 1. The revised site plan, showing the minimum distance of 58.5' from the park to the rear of the new addition and indicating fifteen new scotch pines adjoining the park at an average height of fifteen' to twenty foot is acceptable;
2. Using the roof of the new addition as a storm drainage retention area with release roof drains is acceptable. However, in the event the Board approves this revised application, prior to issuance of the building permit, a specific drawing should be provided showing how the drainage system is being altered or relocated, and where it drains into the park outflow. The revised site plan does not indicate the relocated drainage pipes; and
3. The revised site plan still indicates, in the building data notations, that the height of the new addition includes a basement, first, second, third and fourth floors. Five stories and pent-house at the park side is not in keeping with the Planning Commission views which "seek a reduction in building height so as not to exceed the height of the existing building."

If the new addition is limited to three stories, and an acceptable relocated storm drain drawing is provided for the controlled release roof drains as shown on the revised site plan, the NCPC concluded that the proposed addition would not have a substantial adverse visual or environmental impact on the park. The Board concurs.

24. Advisory Neighborhood Commission 3E, within which the property is located, by the single member district SMD-3E05 by letter of May 22, 1980, reported that the ANC does not oppose the application, but it does have several structural zoning, and environmental concerns. It urged the Board to consider these concerns before taking final action.

First, the ANC understands that the architectural plan is outlined in two phases - the first phase being an addition to the existing structure at the same height and the second phase being the addition of two stories to the new structure. The ANC believes that only the first phase should be under consideration and only when the actual impact of the first phase is established should the second phase be even entertained.

Second, in regards to a variance from the use provisions of the Zoning Regulations to permit the construction of an addition to a studio and office building in an R-1-B District, the ANC in general does not support such use, but considers the application of the National Broadcasting Company a special case given the fact that the R-1-B District at 4001 Nebraska Avenue was already being used as office and studio space.

Third, the ANC believes that the impact, both visual and environmental on Glover Archbold Park should be considered. It has been suggested that the planting of spruce trees between the new addition and the retaining wall could possibly minimize the visual impact. There is also a need for an adequate storm drainage retention system so as to avoid a drainage problem that could adversely affect the park.

At its May 8, 1980 meeting ANC-3E unanimously supported the position of SMD-3E05. . It is also important to note that ANC concurred with both the issues raised by the National Capital Planning Commission and Advisory Neighborhood Commission 3C.

25. Advisory Neighborhood Commission by letter, of April 24, 1980 reported that although the subject application, by the National Broadcasting Company, is not within this Commission's area, the property in question is immediately adjacent. The ANC urged that the Board of Zoning Adjustment, in its consideration of this case, consider any impact both visual and environmental that the proposed addition to a studio and office building might have on Glover Archbold Park. Already, various sections of the Park have suffered adversely from new construction. A case in point is the damage from erosion--which continues to this day--from the site of the Federal National Mortgage Association.

The ANC also suggested that because the Park is Federal property, the National Capital Planning Commission should be asked to comment on this Case. The ANC discussed this matter at its March 24, 1980 meeting, where the positions stated were unanimously adopted.

26. The Board is required by statute to give "great weight" to the issues and concerns of the ANC where a resolution of the ANC is in writing as to such issues and concerns and where the resolution comes from the ANC as a body, not a single member district. The Board does note however, that the issues and concerns of the single family member district and ANC-3C, an adjoining ANC, were presented to the Board and considered by the Board on the part of the OPD and the NCPC.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking a variance, which requires a showing upon the owner of the property of a hardship that stems from the property itself. The Board concludes that the subject site is affected by an exceptional situation as a result of the fact that it is zoned for residential use while its size, shape, and proximity to other non-residential uses make it unfeasible for residential development. As the Board found in Appeal No. 10120, the site is peculiarly shaped and "almost land-locked" by institutional-type uses. In addition, as found in Order No. 4159 and reiterated in Order No. 12011, the site suffers from "inadequate access to street frontage and the close proximity of a high concentrated commercial office operation which has already had adverse affect upon residential property located as much as one-fourth mile distances." The Board further concludes that the application of the Zoning Regulations in this case would impose an undue hardship upon the property owner. The Board has repeatedly found that the subject site by reason of its shape and location suffers a hardship. The Board has recognized that the subject site may not be feasibly developed under the existing zoning; that there are no alternative plans which would result in an economical use of the property; that the elevation of the site is conducive to its use for television purposes; and that NBC has technical operations housed in the existing facility and has needs to expand its mechanical and office facilities at the site to keep up with increases in local broadcasting and with advancements in technology. Other than NBC's increasing need to expand its facilities, the conditions affecting the subject site under which the Board previously found applicant to have met its burden as to "peculiar and exceptional and undue hardship" have remained unchanged.

The Board concludes that the proposed use will not be detrimental to the public good. As the Board found in Order No. 4159, and as it reasserted this finding in Order No. 12011, the NBC use is entirely self-contained, quiet, and unobtrusive because of low height and screening of other commercial use buildings and the Board concluded that the requested use variance would not be detrimental. The new addition is still relatively unobtrusive and low compared with the adjacent National Presbyterian Church and the nearby commercial area on Wisconsin Avenue. The proposed building height is just 18.49 feet from the curb level on Nebraska Avenue. The addition presently proposed will add 15,184.63 square feet per floor or, 45,553.86 total plus penthouse. The lot area is 7.25 acres, only nineteen percent of which is occupied.

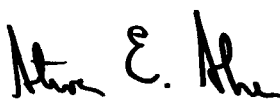
The Board concludes that the variance, as conditioned herein, can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zoning plan. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The applicant shall provide the building setback and additional landscaping as shown on the site plan marked as Exhibit No. 31 of the record.
2. The applicant shall secure the approval of the Director of National Capital Region of the National Park Service for the proposed storm water drainage into Grover Archbold Park.
3. The maximum height of the addition shall be three stories.
4. The Board will approve no additional application for this property until the applicant has prepared a master plan for the site. The Board strongly recommends that the applicant proceed with that plan and present it to the Board as soon as possible.

VOTE: 5-0 (William F. McIntosh, Charles R. Norris, Connie Fortune, Leonard L. McCants and John G. Parsons to GRANT).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 28 JUL 1980

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."